



Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

**Matter of:** Pat Mathis Construction Co., Inc.

**File:** B-248979

**Date:** October 9, 1992

George Papaioanou, Esq., and Hubert J. Bell, Jr., Esq., Smith, Currie & Hancock, for the protester, Clarence E. Mitchell for Mitchco, Inc., and Anil C. Shah for Shah Construction Company, Inc., interested parties, Gabriel N. Steinbert, Esq., and A. R. Dattolo, Esq., General Services Administration, for the agency. Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Contracting agency properly rejected late hand-carried proposal where the record establishes that the protester's representative delivered the proposal to the delivery point after the closing time; there is no evidence of wrongful government action or advice that was the paramount cause of the late delivery; and the protester's representative's own actions significantly contributed to the late delivery. Contracting official's reliance on time/date clock that was in closest proximity to proposal delivery point was reasonable in determining closing time for receipt of proposals.

### DECISION

Pat Mathis Construction Co., Inc. protests the rejection of its proposal as late by the General Services Administration (GSA) under request for proposals (RFP) No. GS-04P-92-EXC-0030 (MEG) (8a), which was issued for the construction of a new Federal Building in Lakeland, Florida. Mathis contends that its proposal was timely submitted. We deny the protest.

The procurement was set aside for small disadvantaged business concerns under section 8(a) of the Small Business Act as amended, 15 U.S.C. § 637(a) (1988 and Supp. II 1990). Competitive proposals for the project were solicited from a number of 8(a) concerns, including Mathis. The RFP was

amended several times and, as amended, advised offerors to submit their proposals to a designated suite in the GSA's Business Service Center in Atlanta, Georgia, by 2:30 p.m. on May 29, 1992.

Mathis has submitted a sworn affidavit from the representative who attempted to submit the firm's offer on the closing date, and the agency has submitted sworn statements from the contract specialist and bid custodian who were assigned to this procurement, all setting forth an account of the events that transpired on May 29. It is undisputed that Mathis's employee arrived at the designated proposal delivery point at approximately 2 p.m., and asked for a desk where he could complete his proposal package. The bid custodian directed him to a nearby conference room that is used for bid openings which adjoins the space where the bid custodian's desk was located. At about 2:17, the employee phoned his office to discuss the offer, and then returned to the conference room to enter the final figures onto the three copies of the proposal. At 2:29, the agency's contract specialist asked Mathis's representative if he realized that he only had 1 minute left to submit the proposal. Mathis's representative states that this warning was consistent with the time shown on a clock that was hanging in the conference room. According to the protester's representative, he completed writing the final numbers onto the form just as this question was being asked, immediately gathered up the papers, enclosed the proposal in the envelope and sealed it, and presented it to the bid custodian, whose desk was 10-15 feet away. The representative states that these actions took only a few seconds and that the proposal was offered to the bid custodian before 2:30. However, he relates that she refused to accept it, telling him that 2:30 had passed. She pointed to the time/date punch clock on her desk. Mathis's representative contends that he then explained that he was relying on the time on the clock in the conference room, which did not yet read 2:30. The bid custodian then inserted a piece of paper into the time clock that she had been relying on, which came out stamped "2:31."

There is only a slight variation in the agency's version of the sequence of events. According to the bid custodian, when 2:30 was announced, Mathis's representative walked to the custodian's desk with open papers, assembled his proposal package at that point, and handed it to her. Without engaging in any discussion, she saw that the clock now read 2:31, stamped a sheet of paper to make sure that her reading of the clock was correct, and told him that she could not accept the proposal because it was late. She then showed him the paper that she had stamped when he first approached her, and advised him that she could not accept his proposal. Two other offerors have submitted statements

as interested parties to the protest, asserting that their proposals were submitted at 2:27 and 2:29, and corroborating the agency's assertion that it was after 2:30 when Mathis's representative attempted to submit his offer.

Mathis argues that its proposal was submitted before the 2:30 deadline, according to the clock on the wall of the conference room. The protester contends that but for improper government action, its proposal would have been accepted on time, arguing that the bid custodian's reliance on her desk clock and her failure to inform the offerors of her intention to use that clock were the paramount cause of Mathis's offer not being accepted by 2:30. Mathis contends that the closing time for receipt of proposals should have been based on the time shown on the clock on the wall of the conference room, since that clock was visible to offerors and since that clock was apparently the clock the contract specialist was relying on when he told Mathis' representative that he only had one minute to submit his offer, rather than the time/date clock on the bid custodian's desk.


Mathis contends that the agency should be required to rely on the clock that was hanging in the nearby conference room which showed the proposal was tendered prior to 2:30 p.m., rather than the time/date clock on the bid custodian's desk. We disagree. In analogous situations under advertised procurement procedures, where two clocks show inconsistent times, the bid opening officer's declaration regarding the time is determinative, unless it is shown to be unreasonable under the circumstances. Chattanooga Office Supply Co., B-228062, Sept. 3, 1987, 87-2 CPD ¶ 221. We believe that principle is applicable here. In this case, the bid custodian relied on the clock that was closest to the proposal delivery point, and which she would use to stamp the incoming proposals to record their time of receipt. The wall clock relied on by the protester not only was in a separate room, but the protester does not argue that he asked the bid custodian in advance about the clock that she would use, or that she misinformed him about the official clock. Therefore, we find nothing unreasonable in the bid custodian's reliance on the time/date clock to determine when closing time had arrived.

It is the responsibility of the offeror to deliver its proposal to the proper place at the proper time, and late delivery generally requires that a proposal be rejected. See Robert R. Nathan Assocs., Inc., B-230707, June 28, 1988, 88-1 CPD ¶ 615. When a proposal is delivered late because of improper government action, the proposal may be considered notwithstanding the lateness. However, a late proposal should not be considered if the offeror significantly contributed to the late receipt by not acting

reasonably in fulfilling its responsibility of delivering a hand-carried proposal to the proper place by the proper time, even if lateness may have been caused, in part, by erroneous government action or advice, Seer Publishing, Inc., B-237359, Feb. 12, 1990, 90-1 CPD ¶ 181.

Here, we think Mathis's representative's failure to allow sufficient time to make timely delivery of its hand-carried proposal significantly contributed to the late submission of its proposal. By the protester's own account, Mathis's representative allowed less than one minute to assemble the proposal and deliver it to the custodian; by allowing itself so narrow a margin of time, we believe Mathis's representative assumed the risk that any number of events might intervene to prevent the timely submission of its proposal. In the circumstances of this case, where Mathis's representative relied on others to alert him to the time and allowed himself less than a minute to assemble and submit the firm's proposal, we find that it was these actions, rather than any action of the government, which were the paramount cause of Mathis's late proposal submission. Moreover, Mathis's reliance on the contract specialist's warning about the time, which was given as a courtesy, is misplaced. The contract specialist was under no obligation to give this warning and his action cannot be construed as improper.

The protest is denied.

  
for James F. Hinchman  
General Counsel